

DOCKET NO: NNH-CV21-6110213S

SUPERIOR COURT

ANIKA, HUNTE, ADMINISTRATOR
FOR THE ESTATE OF ARIES-REIGN
PETERSON, ET AL.

J.D. OF NEW HAVEN

V.

AT NEW HAVEN

YALE NEW HAVEN HOSPITAL, INC.,
ET AL.

DECEMBER 12, 2025

TRIAL MEMORANDUM OF DECISION

I. Procedural History:

This case comes before the court after a court trial. The trial was held on May 12, May 13, May 14, May 15, May 16, May 19, May 20 and May 21, 2025. The parties were represented by counsel at the trial. Plaintiff's Post-Trial Brief (#245) was filed on July 15, 2025. Defendant's Post-Trial Memo (#247) and Proposed Facts (#246) were filed on August 29, 2025. Plaintiff's Reply Brief (#248) was filed on 9/15/2025. Defendant's Response to Plaintiff's Reply Brief (#249) was filed on 9/26/2025. Plaintiff's Sur-Reply Brief to Defendant's Reply Brief (#250) was filed on 10/14/2025.

The operative complaint is the Amended Complaint filed on 3/17/2021 (#107). The operative answers are the Amended Answers (#108 and #109) filed on 4/16/2021. The plaintiff withdrew on the record Counts Five and Six alleging medical malpractice. Counts Seven through Ten alleged loss of consortium but were ultimately withdrawn by the plaintiff. The court denied the defendants' Motion for Summary Judgment regarding the loss of consortium claim (Order #149.20). See Memorandum of Decision (#149.50).

The plaintiff subsequently withdrew Counts Seven through Ten in light of the Connecticut Supreme Court's decision in *L.L. v. Newell Brands* (released 2/11/2025); see order #195 and Withdrawal #198.

II. Facts:

As the factfinder in a court trial, the court is free to believe some, all, or none of the evidence and testimony of the witnesses. “[I]t is well settled that [t]he weight to be given the evidence and the credibility of the witnesses are within the sole province of the trial court. . . . [T]he trial judge . . . is free to accept or reject, in whole or in part, the testimony offered by either party. . . .” (Internal quotation marks and citations omitted.) *Commissioner of Transportation v. ACP, LLC*, 221 Conn. App. 708, 722 (2023). The court has considered all of the evidence presented at trial, the exhibits and testimony of the witnesses, the stipulations of the parties, the briefs and arguments of counsel and the applicable law. The court’s factual findings are made by a preponderance of the evidence. The court finds generally more credible the testimony of the plaintiffs and their witnesses, than the testimony of the defendants, and their witnesses. Based on the reasons articulated herein, the court finds that the plaintiffs have proven by a preponderance of the evidence that the defendants failed to obtain any consent and failed to obtain informed consent regarding the use of cow-based fortifier and cow-based formula, and that the plaintiff, Estate of Aries Reign-Peterson, suffered damages as a result of the defendants’ failure to obtain consent and informed consent.

The plaintiffs, Anika Hunte and Dane Peterson, are the parents of Aries Reign-Petersen. Ms. Hunte is also a plaintiff in her capacity as the Administrator of the Estate of Aries. This case involves the death of Aries-Reign Peterson. Aries was born prematurely on January 30, 2018 with an extremely low birth rate, about half the size for his gestational age. His gestational age was 27 weeks 4 days, and he weighed 620 grams. Ms. Hunte was not taking any medications which would affect Aries' health.

Yale New Haven Hospital is a Level 4 NICU; it treats all aspects of surgery and life support for infants. It is the highest level NICU and cares for the sickest patients. An infant born at 27 weeks and 4 days is expected to weigh approximately 1,000 grams. Upon birth, Aries was transferred to the neonatal intensive care unit (NICU) of defendant, Yale-New Haven Hospital, due to his prematurity and need for respiratory and nutritional support. Aries also had severe abdominal issues, including vomiting, distention, bowel loops, abnormal films and he failed to pass stool. One or both of the parents were at the hospital daily from the time of Aries' birth to the time of Aries' death. The parents wanted to be involved in all treatment decisions and communicated their desire to the defendants.

Dr. Mark Mercurio, an expert in the field of neonatal-perinatal medicine, was one of Aries' treating physicians in the NICU at Yale. Dr. Mercurio treated Aries from February 5, 2018 through February 11, 2018, and from February 19, 2018 to February 25, 2018. As of February 25, 2018, Aries was receiving a diet of 50% Care30 (bovine-based formula) and a mixture of mother's own milk

with bovine-based fortifier. No consent was obtained from the parents to feed Aries bovine-based products. Informed consent was not obtained from the parents to feed Aries bovine-based products. Dr. Mercurio, during his trial testimony, testified credibly that he had no memory of Aries, of treating Aries or of Aries' parents, and the court so finds.

Arie's nutrition regimen varied, depending on a number of factors regarding the severity and/or improvement in his medical issues. At times, he received nothing by mouth ("NPO") and received total parenteral nutrition ("TPN") through intravenous feedings. Aries was monitored regularly, including for weight, bowel obstructions, nutrition tolerance, stomach distension, gas patterns, stools and bowel loops. Pediatric surgery was consulted and, at various times, advised the treating physicians about the course of nutrition and treatment.

Due to abdominal issues, it was difficult for Aries to tolerate food. He showed signs of feeding intolerance, such as vomiting (emesis), abdominal distension and distress. In the first days of life, Aries received TPN for nutrition and swabs of mother's colostrum (early breastmilk). Between his birth and February 6, 2018, he continued to receive TPN and was showing signs of abdominal distension and bowel obstruction. TPN is not a long-term option for nutrition because it has other health risks, such as toxicity to the liver. On the evening of February 7, 2018, Aries began enteral feeds, which resulted in vomiting. He continued to receive TPN.

On February 9, 2018, continuous feeds were increased but later stopped due to vomiting. An X-Ray on February 10, 2018 showed a nonspecific gas pattern with air in the small and large bowel that appeared less dilated compared to the most recent study. During this time period, multiple X-Rays showed abdominal issues and, again, pediatric surgery was consulted. Aries was growing well on TPN, but his growth declined when he was transitioned to mother's own milk unfortified.

On February 12, 2018, surgery recommended that feeds be started at a low rate because Aries had bowel movements. Feeds began on February 14, 2018 and no vomiting occurred. Feeds continued (with TPN) and Aries' weight increased. On February 13, 2018, Aries was fed nothing by mouth (NPO) because of vomiting from continuous feeds. Often when the defendants attempted to advance the feeds, Aries vomited or showed signs of abdominal distension or an abnormal X-ray. When fed enterally--i.e., through the gastrointestinal system--Aries was always fed mother's own milk.

On February 19, 2018, Aries was tolerating slow feeds and produced stools. His weight was 920 grams. TPN was discontinued on February 19, 2018. Between February 19, 2018 and February 21, 2018, Aries lost weight, from 920 grams to 870 grams. The weight loss occurred when Aries received mother's own milk unfortified. His weight went from the fourth percentile to the second percentile. He was diagnosed with nutritional risk on February 20, 2018.

Once TPN was discontinued, Aries experienced hypoglycemia and low BUN (blood urea nitrogen) levels, which concerned Dr. Mercurio. On February 22, 2018, the defendants decided to fortify mother's milk with a bovine-based fortifier. The defendants did not discuss this decision with Aries' parents, nor did they discuss risks or alternatives. Dr. Mercurio was concerned that inadequate growth could impact organ and brain development so decided to add "human milk fortifier" to mother's breast milk. "Human milk fortifier" is a cow-based product and is not made from human milk, as the name implies. Neither parent was told that a bovine-based fortifier would be used. Both parents believed that a fortifier was a form of thickening agent for mother's milk. The risk of Aries developing NEC from the use of bovine-based products was never discussed with the parents. The defendants did not discuss with the parents the risks and benefits of the use of bovine-based products. Although Aries' parents wanted only mother's own milk to be fed to Aries, the defendants did not opt to increase Aries' in-take of mother's own milk or pursue another alternative.

On February 22, 2018, Aries received enteral feeds and fortification to 22 calories. Aries was fed breastmilk with Similac human milk fortifier (to 22 calories). Calories increased to 24 on February 23, 2018 using mother's milk and cow-based fortifier; Aries' weight was 850 grams. Calories were increased to 27 on February 25, 2018. At this point in time, the proportion of Aries' mother's own milk fed to Aries was slightly under half by volume, however, Aries ultimately received a diet of more than 50% bovine-based products.

Aries experienced respiratory distress, distended stomach and lethargy during the evening of February 25, 2018 to the early morning of February 26, 2018. Feeds were stopped, he was put back on NPO and given antibiotics. An abdominal X-Ray raised a concern for NEC, showing bowel loops, gas in the abdomen and portal venous gas. Aries' medical condition worsened during the day on February 26, 2018 and the development of NEC was confirmed. TPN was restarted. Aries' parents opted not to pursue surgical treatment.

The court found credible the testimony of Aries' parents, Ms. Hunte and Mr. Peterson. Aries' parents always wanted Aries to be fed mother's own milk and communicated such to the defendants. The parents believed that mother's own milk was the most beneficial for Aries, particularly given his prematurity and extensive medical issues. The parties stipulated, and the court so finds, that Ms. Hunte was producing sufficient breastmilk to feed Aries.

In mid-February 2018, the parents met with a lactation specialist at Yale and told the specialist that they only wanted mother's own milk to be fed to Aries. The parents were not advised at the meeting, nor at any other time, that bovine-based products would be fed to Aries.

When Aries' growth began to decline while being fed only mother's own milk, Dr. Mercurio decided to fortify mother's own milk with a bovine-based fortifier. The parents were not told prior to the introduction of "human milk fortifier" that a bovine-based fortifier would be used to feed Aries, in combination with mother's own milk. When, after the fact, the parents were told that Aries was being fed a fortifier, the defendants never explained the

content of the fortifier. Bovine-based products increase the risk for developing NEC. The parents were also never told by the defendants that Aries would be fed formula. Had the parents been told about NEC and the increased risk of developing NEC from bovine-based products, they would not have agreed to Aries being fed the bovine-based fortifier or formula. The parents learned that Aries had been fed formula by reading the medical records after Aries' death.

Fortifier is an additive that is added to mother's own milk to increase calories and provide nutrition. "Human milk fortifier" is a cow-based (or bovine-based) product that is added to mother's own milk. "Human milk fortifier" is not made from human milk, as the name suggests. Formula is liquid fed to babies. Fortifier has a higher caloric density than formula. At the time of Aries' birth and treatment, there was not available human-based formula; only mother's own milk or donor milk. However, human-based fortifier was available.

Human breastmilk is sometimes required to be fortified for premature infants, depending on the gestational age and weight of the infant, in order to provide sufficient nutrients for proper growth. Pre-term infants with very low birth rates are generally more at risk for neurodevelopmental outcomes which may affect them as they grow. The level of fortification needed is specific to each infant. Low birth weight infants, such as Aries, often require fortification of mother's milk. Human-based fortifiers, such as Prolacta, are appropriate for infants such as Aries. Prolacta was available in hospitals beginning in 2006, and by 2018, it was heavily marketed and readily available.

If the defendants had advised the parents that the use of bovine-based fortifier and formula was necessary (in the defendants' opinion) in order for Aries to grow, the parents would not have agreed to the use of bovine-based products and would have asked for other options. One other option would have been for the defendants to use Prolacta, a human-based fortifier, including (if necessary) transferring Aries to a hospital that carried Prolacta.

Dr. Jonathan Cohen was the plaintiffs' expert witness at trial. He is an expert in neonatal-perinatal medicine. He has worked as a neonatal-perinatal expert in Kentucky for over twenty years. Dr. Cohen's practice is to fortify mother's own milk for extremely premature infants and uses human-based products. The court found Dr. Cohen's testimony credible.

In 2018, the development of NEC was a known and material risk of the use of bovine-based products in feeding premature babies such as Aries. The defendants were legally required, and had a duty, to discuss with Aries' parents prior to the use of bovine-based products the intention of the defendants to feed Aries bovine-based products, and to obtain informed consent from Aries' parents. The defendants' duty included discussion with the parents that the use of bovine-based fortifier and formula significantly increased the risk of Aries developing NEC, and that the risk included potential death as a result of NEC. The defendants failed to advise the plaintiffs and failed to obtain informed consent.

The parents first learned about NEC after Aries had developed NEC. At a meeting in mid-April 2018 with Aries' treatment team, the parents, the

plaintiffs' pastor (Price Nii Boye), and the Yale chaplain, the topic of fortifier and NEC was discussed. Ms. Hunte had previously signed a consent form for the use of pasteurized donor milk under circumstances indicated in the consent. However, the consent form did not address the use of bovine based fortifier or formula. Fortifier had never previously been discussed with the parents, only the potential use of donor breast milk had been previously discussed. The parents were first told by the defendants at this meeting about the risk of developing NEC in the context of feedings, which was never previously discussed with the parents. Ms. Hunte asked the doctor at the meeting why the defendants fed Aries fortifier if the use of fortifier increased the risk of NEC. The parents were told that the defendants used the fortifier because it was "protocol".

The defendants did not obtain consent from the parents to feed Aries bovine-based products. The defendants did not explain to the parents the risks and benefits of using bovine-based fortifier or formula. The parents were never offered any alternatives to the use of bovine-based products. Had the parents been told of the increased risk that Aries would develop NEC from bovine-based products, and had also been told the advantages of the use of bovine-based products, the parents would not have agreed to have bovine-based products fed to Aries. Ms. Hunte credibly testified, and the court so finds, that Aries' condition rapidly changed from appearing fine one day, to being at risk of death the following day, shortly after receiving bovine-based formula. During the April meeting, the defendants repeatedly asked the parents to agree to withdraw

medical support from Aries. The parents did not want to withdraw the medical support, and instead, wanted Aries to die naturally. At the end of the April meeting, the parents told the defendants that they were “leaving Aries in God’s hands”.

On April 18, 2018, Aries died as a result of respiratory failure and multi-organ failure caused by NEC. The period of time during which the defendants fed Aries bovine-based products without obtaining consent or informed consent from the parents was from February 22, 2018 through Aries’ death on April 18, 2018. The related medical expenses and funeral expenses totaled \$747,317.42. Aries’ life expectancy was 71.3 years.

Dr. Cohen’s hospital began to use Prolacta, a human milk based fortifier, in 2010. The 2012 American Academy of Pediatrics (AAP) policy statement on breastfeeding supports the use of human-based fortifiers and formulas. The 2012 policy statement was not reaffirmed in 2018 by the AAP, however, the defendants relied on the statement in their treatment of Aries. The AAP never issued a statement retracting the 2012 policy statement, nor did the AAP ever state that the 2012 policy statement was wrong, made in error or otherwise the result of misguidance. When the AAP policy statement regarding donor human breast milk was published in 2017 (Ex. 25), the 2012 AAP policy statement was still in effect. The 2012 statement was revised in 2022. (Ex. 27).

The court credits Dr. Cohen’s testimony and finds that the principles in the 2012 AAP statement were still in effect in 2018 when Aries was treated by the defendants. Although the defendants argue that the 2012 AAP statement

was no longer in effect at the time of Aries' treatment, the argument belies the evidence. The defendants specifically endorsed the 2012 AAP policy statement during Aries' treatment. Dr. Mercurio credibly testified that the defendants relied on the statement at the time of Aries' treatment. It is disingenuous for the defendants to now argue that the 2012 statement had no bearing on their treatment of Aries.

On January 31, 2018, Ms. Hunte signed a consent to use pasteurized donor milk. The consent form, issued by Yale New Haven Hospital, referenced the 2012 AAP policy statement, quoting from it and referring to it as “[t]he recent American Academy of Pediatrics Policy Statement on Breastfeeding and the Use of Human Milk”. (Pl. Ex. 11.) The purpose of the consent form was to obtain consent to feed babies pasteurized donor breastmilk in the event that mothers “for some reason are not able to provide their own milk, do not have enough milk or choose not to provide their own milk”. The form recommends pasteurized donor breastmilk as a feeding option. Ms. Hunte was providing her own milk and had excess amounts of milk such that she was donating her breastmilk to the breastmilk donor bank.

The consent form signed by Ms. Hunte includes the statement that “[r]esearch indicates that it [donor breast milk] is more nutritionally beneficial than preterm formula for infants weighing less than 1500 grams and/or gestational age of less than 32 weeks.” Aries weighed less than 1500 grams and his gestational age at birth was less than 32 weeks. The consent form also includes the following statements: “The reported health benefits of human milk

compared to formula include decreased risk of respiratory and intestinal infections, provision of active growth and developmental hormones, improved digestion and tolerance of feeding and promotion of healthy eye and brain development. Some data demonstrate that the use of pasteurized donor human milk provides similar health benefits. That is why we encourage the use of pasteurized donor breastmilk as a feeding option for infants weighing less than 1500 grams and/or gestational age of less than 32 weeks. . . . There are no known risks to the use of pasteurized donor milk and there are no reported cases of disease transmission from donor milk to a recipient baby. However, there may be side effects that we cannot currently predict and that may be identified in the future. If a mother's own milk or donor milk is not used, babies will be given preterm infant formula." Dr. Mercurio credibly testified that at the time of Aries' treatment, Yale was still endorsing the quoted language from the policy statement reflected in the consent form.

The consent form advises parents that preterm infant formula will be used when mother's own milk or donor milk is not used. The form does not provide consent for the use of preterm infant formula when mother's own milk is being used. The consent signed by Ms. Hunte did not provide informed consent of the use of preterm infant formula when Ms. Hunte's own milk was being used to feed Aries.

At the time of Aries' birth and treatment, the defendants chose not to stock human milk based fortifiers, such as Prolacta. The court does not credit the testimony of Dr. Mercurio and other defense witnesses that the reason Yale

did not stock Prolacta in 2018 and does not now stock Prolacta is because they did not believe there existed compelling evidence that outcomes were better with human milk based products. This position is inconsistent with the 2012 AAP statement endorsed by Yale.

Similac Special Care is a bovine based fortifier designed for pre-term infants and was given to Aries. The defendants did not obtain informed consent from the parents to feed Aries the product, nor did the defendants discuss with the parents the intent to feed Aries a bovine-based product. Bovine-based fortifiers contain ingredients beyond cow's milk, some of which may be harmful to premature infants, such as Aries. In 2018 and currently, bovine milk based fortifier is the only fortifier used at Yale. Prolacta, a human based fortifier, was available at other NICUs during Aries' life. Prolacta was a readily available alternative for the defendants to use at the time of Aries birth and treatment of Aries.

Aries developed necrotizing enterocolitis (NEC) on February 26, 2018 and died on April 18, 2018 as a result of complications due to NEC. NEC is generally an inflammatory process of the intestines that can become a necrotizing process, causing tissue to die. NEC totalis, i.e., total loss of the entire intestine, can happen quickly and the chance of survival is slim. Aries developed NEC totalis shortly after the defendants fed Aries bovine-based formula.

NEC is regularly discussed and studied in the field of neonatology.

Many factors contribute to the development of NEC in a pre-term infant; disagreement exists among medical experts as to the cause of the development of NEC because NEC is not fully understood. Aries suffered from the following conditions, all of which may have contributed to the development of NEC and are risk factors for NEC: prematurity, extremely low birth weight, being small for gestational age, immature immune system, feeding intolerance [intestinal dysmotility}, preeclampsia in mother during pregnancy, vomiting, abdominal distention, visible bowel loops, abnormal abdominal appearance on film, failure to pass stool, histamine 2 blockers, abnormal dopplers and intrauterine growth restriction [IUGR]. Aries was diagnosed with NEC on February 26, 2018, at four weeks old, 31 weeks and 4 days gestational age. The highest risk for developing NEC is when an infant reaches between four and six weeks of age. The defense witnesses, including Dr. Mercurio, opined that the use of human-based fortifier is protective against developing NEC in premature babies such as Aries, but disagreed that the use of a bovine-based fortifier contributes to the development of NEC. The court does not credit Dr. Mercurio's testimony.

The court credits Dr. Cohen's testimony that a diet with bovine-based products significantly increases the risk of developing NEC in a premature baby. The principles of the 2012 AAP statement (Ex. 4) are still correct today as it relates to the benefits of human-based milk diets. A meta-analysis of studies done between 1983 to 2005 established a 58% reduction in the occurrence of NEC when premature babies were fed human-based milk diets. The timeframe of when Aries developed NEC is consistent with the pattern credibly testified to

by Dr. Cohen where a premature baby is doing well and improving but then develops NEC within hours after being fed bovine-based products. The court credits Dr. Cohen's testimony and finds that the bovine-based fortifier and formula fed to Aries more likely than not caused NEC and more likely than not ultimately caused Aries' death as a result of complications due to NEC.

Although Aries was prescribed a pain medication, the court finds that Aries experienced pain and suffering during his treatment and death.

Dr. Mark Underwood was the defendants' expert witness at trial. He is an expert in neonatal-perinatal medicine. The court found Dr. Cohen's testimony generally more credible than Dr. Underwood's testimony, although the court did credit some of Dr. Underwood's testimony. The most important testimony of Dr. Underwood which was credited by the court is that reasonable expert minds can disagree about whether bovine-based products increase the risk of NEC and ultimately, of death, in premature babies such as Aries. The court finds that reasonable experts can disagree but that, based on the most credible evidence presented at trial, the use of bovine-based fortifier and formula significantly increase the risk of development of NEC and NEC-related deaths, and therefore, defendants were required to obtain informed consent from the parents before feeding bovine-based products to Aries.

The court did not credit Dr. Underwood's testimony that the use of bovine-based fortifiers for premature babies is the standard option in neonatal-perinatal medicine. The court did not credit Dr. Underwood's testimony that in 2018, a diet of exclusive human milk was not an appropriate choice for a baby

such as Aries. Based on the credible testimony of Dr. Cohen, the court finds that it would have been appropriate for the defendants to use Prolacta, or another human-based fortifier, when feeding Aries.

The court does not credit Dr. Underwood's testimony that Aries was not at an increased risk for developing NEC based on his feeding regimen. The court does not credit Dr. Underwood's testimony that the scientific studies are not sufficient to necessitate a change in the protocol from the use of bovine-based fortifier to Prolacta or a similar human-based fortifier. The court recognizes that portions of the studies produced in evidence by both plaintiffs and defendants contain some conflicting opinions and conclusions regarding the use of human-based products and bovine-based products. The court does not credit Dr. Underwood's opinion that the studies he relied on are superior to the studies relied on by the plaintiffs' expert. The evidence most persuasive to the court was the credible testimony of Dr. Cohen.

The court does not find credible Dr. Underwood's testimony that there is no need to obtain consent or informed consent from parents before using bovine-based products. The court does not credit Dr. Underwood's testimony that bovine-based products do not increase the risk of developing NEC. The court agrees with Dr. Underwood, and other medical experts who testified that mother's own milk protects against the development of NEC. However, the court finds that the use of bovine-based products significantly increases the risk of NEC and death as a result of complications from NEC, and that the risk

was known and material at the time of Aries' birth and treatment by the defendants.

The court credits Dr. Cohen's testimony, and so finds, that there was a temporal relationship between Aries being fed bovine-based formula and developing NEC within hours of the feeding. The court does not credit the testimony of Dr. Underwood that no temporal relationship existed. The court finds that the incidence of developing NEC in premature babies is higher with babies fed formula than with babies fed mother's own milk. The court does not find Dr. Underwood's opinion credible that a doctor need not explain to a parent that fortifier or formula is a bovine-based product or the risks associated with bovine-based products.

The court credits Dr. Underwood's testimony, and so finds, that there is nothing in Aries' medical records to dispute the parents' testimony that the parents were not told about the bovine-based products until they reviewed the medical records after Aries' death. The court credits Dr. Underwood's testimony, and so finds, that Prolacta was commercially available in 2018 and does not contain corn syrup. The court credits Dr. Underwood's testimony, and so finds, that a baby can be doing well medically and within a few hours, develop "full-blown" NEC. Aries was doing medically well and within a few hours of being fed bovine-based formula, developed NEC totalis.

The experts disagree on whether it was appropriate for the defendants to fortify mother's own milk with human milk fortifier (i.e., bovine-based). Dr. Underwood credibly testified that this is an issue about which reasonable

minds may differ. The court finds that this is an issue about which reasonable experts can differ. Dr. Cohen, whose testimony was credited by the court, is of the opinion that informed consent is required before feeding a premature baby, such as Aries, bovine-based products. Defendants' experts disagree. The court finds more credible the testimony of the plaintiffs' expert, Dr. Cohen, and finds that the defendants were required to obtain informed consent from Aries' parents before feeding Aries bovine-based products, and that the defendants were required to discuss the risks and benefits of bovine-based products and the alternatives.

Although the court agrees with the testimony of Dr. Mercurio that a parent cannot logistically be asked to consent or give permission for *every* procedure performed on a baby such as Aries, the issue of consent for feedings was sufficiently of concern to the defendants that they required a consent form to be signed by Ms. Hunte for the potential use of pasteurized donor breast milk. Defendants' argument that informed consent was not required for the use of bovine-based fortifier and formula defies the weight of the credible evidence.

The court credits Dr. Cohen's testimony that human-based fortifier would have been most appropriate for Aries. Because Yale elected not to carry a human-based fortifier, the defendants had a duty to discuss with Aries' parents that the only fortifier used by Yale was bovine-based, and to offer to attempt to obtain Prolacta or transfer Aries to a hospital that did use human-based fortifier. The defendants also had a duty to discuss and obtain informed consent for the use of the bovine-based formula.

Dr. Mercurio credibly testified that he would have “looked into” making Prolacta available at Yale and that the issue was discussed prior to Aries’ birth but that the option of carrying Prolacta was rejected by the defendants. Dr. Mercurio credibly testified that had the parents asked, they should have been told that “human milk fortifier” was actually a bovine-based product. The burden was on the defendants to obtain informed consent; the burden was not on the parents to glean from the term “human milk fortifier” that the product might be made of anything other than human milk. The court does not credit Dr. Mercurio’s testimony that had the parents not asked about “human milk fortifier”, the defendants had no obligation to explain its content based on Dr. Mercurio’s belief that a bovine-based fortifier does not increase the risk of developing NEC.

The use of mother’s own milk helps to protect against the development of NEC. The court rejects as not credible the testimony of the defendants’ witnesses that there exists no reliable evidence that Prolacta, or a human-based product, decreases the risk of NEC.

The U.S. Secretary of the Department of Health and Human Services National Institute of Child Health and Human Development’s 2024 Working Group Report (Def. Ex. J.) concluded that the relationship between feeding and development of NEC is unclear. Defendant’s Exhibit F, referencing a 2015 Centers for Disease Control (CDC) study, states that almost three-quarters of Level 4 facilities use bovine-based fortifiers, while less than 19% use human milk-based fortifiers, and that some facilities use both bovine and human-

based fortifiers. The court finds that the defendants' failure to carry human-based fortifiers during Aries' life did not alleviate the defendants' duty to obtain informed consent, or any consent, from Aries' parents before using bovine-based products.

The court credits the testimony of Aries' mother and father that they told the defendants and their medical team that they only wanted Aries to be fed mother's own milk, and the court so finds. Neither parent agreed to the use of bovine-based products in Aries' feedings. Mother fed her other children formula after they reached the age of six months but began each of the children on mother's own milk. Again, Dr. Mercurio has no memory of Aries, Aries' parents or treating Aries, including whether the parents requested the use of mother's own milk. The fact that the medical records do not reflect that the defendants were told that Aries' parents only wanted human milk to be fed to Aries does not establish the fact that the parents did not tell the defendants of the parents' desire to feed Aries only human milk. Dr. Mercurio credibly testified that such conversations with parents would not customarily be documented in the record, and the court so finds.

The court finds the defendants were aware of the benefits of the use of mother's own milk and human milk, and the parents' desire to feed Aries mother's own milk. The defendants were also aware that the use of a bovine-based fortifier would significantly contribute to the risk of Aries developing NEC, and the risk of death due to NEC. The risks of using bovine-based products were material and known to the defendants. The court finds from the

weight of the credible evidence that the use of bovine-based products was a significant factor in Aries developing NEC and ultimately dying.

The defendants were required to obtain informed consent from the parents before using bovine-based products to feed Aries, which the defendants failed to do. A reasonable patient in the position of the parents would have found material whether human-based fortifier or bovine-based fortifier was being use in their baby’s diet, and whether “human milk fortifier” was actually a product made from bovine milk, rather than human milk. The court finds that had Aries been fed a human-based fortifier with mother’s own milk, it is more likely than not that his risk of getting NEC would have been significantly reduced such that Aries would not have developed NEC, and it is more likely than not that Aries would not have died.

The court credited the testimony of Dr. Steven Shapiro, the plaintiffs’ economic expert. Dr. Shapiro calculated Aries lost earning capacity as of March 1, 2023 to be \$1,215,567, which the court credits and so finds. The court finds the methodology used by Dr. Shapiro to be reliable and credible. The court did not find credible the testimony of the defendants’ economic expert, Dr. Sam Lundstrom. Dr. Lundstrom testified that the economic income loss to Aries is \$218,596, an opinion which the court does not credit. Dr. Lundstrom’s criticism of Dr. Shapiro’s testimony was also not credited by the court.

The court considered but did not find helpful the rebuttal testimony of the plaintiff’s expert witness, Dr. Cohen, presented by the plaintiff on the last day of trial. The court’s factual findings, legal analysis and ultimate decision in

this case were made independently of Dr. Cohen’s rebuttal testimony.

Additionally, the court agrees with the defendants that the evidence does not support a finding that the defendants failed to follow their own guidelines regarding feedings.

III. Legal Analysis:

In Counts One and Three, the plaintiffs allege that the defendants failed to obtain any consent from the parents for the use of bovine-based products. In Counts Two and Four, the plaintiffs allege that the defendants failed to obtain informed consent. The court finds that the plaintiffs have proven by a preponderance of the evidence that the defendants committed battery by their failure to obtain any consent, and by their failure to obtain informed consent.

“A civil assault is the intentional causing of imminent apprehension of harmful or offensive contact in another. 1 Restatement (Second), Torts [Section 21 (1965)]. . . Actual, physical contact (technically defined as ‘battery’) is not necessary to prove civil assault; . . . and, thus, [i]t is more technically correct in Connecticut civil tort law to refer to what is commonly called an ‘assault’ as a ‘battery.’ However, the cases rarely make that distinction. . . . An actor is subject to liability to another for battery if (a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and (b) a harmful contact with the person of the other directly or indirectly results.” (Internal quotation marks omitted; internal citations omitted.) *Maselli v. Regional School District Number 10*, 198 Conn. App. 643, 659-61 (2020). See also, *Alteiri v. Colasso*, 168 Conn.

329 (1975). The defendants acted with the intention of causing harmful or offensive contact by feeding Aries bovine-based products without any consent or informed consent of the parents, and such contact was the direct or indirect result of Aries developing NEC and ultimately dying from complications due to NEC.

“The informed consent doctrine derives from the principle that [e]very human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient’s consent commits an assault for which he is liable in damages.” (Internal quotation marks omitted; internal citations omitted.) *Lynch v. State*, 348 Conn. 478, 497 (2024), quoting *Duffy v. Flagg, et al.*, 279 Con. 682, 691 (2006). The standard by which the court must analyze a claim of lack of informed consent is a lay person standard, rather than a professional standard. *Duffy v. Flagg, et al., supra*. The question to be answered by the court is what information a reasonable patient would find material as to the anticipated procedure. The court must consider four factors in analyzing a claim of lack of informed consent: (1) the nature of the procedure; (2) the risks and hazards of the procedure; (3) alternatives to the procedure; and (4) anticipated benefits of the procedure. *Id.* at 688. Plaintiff must prove there was a failure to disclose a known material risk of a proposed procedure and that such failure was a proximate cause of the injury. “Material information” means that information which a reasonable plaintiff would have found material in making a decision whether to embark on a contemplated course of therapy.”

Downs v. Trias, 306 Conn. 81, 88 (2012), citing *Duffy v. Flagg, et al.*, *supra* at 692. “[T]he test for determining whether a particular peril must be divulged is its materiality to the patient’s decision: all risks potentially affecting the decision must be unmasked.” (Internal quotation marks omitted; internal citations omitted.) *Logan v. Greenwich Hospital Association, et al.*, 191 Conn. 282, 291-92 (1983).

A reasonable plaintiff would have found material whether fortifier and formula used for feedings was bovine-based or human-based. The known and material risks and hazards of using bovine-based products was the increased risk of developing NEC and ultimately, the risk of death related to NEC. The alternatives to using bovine-based products was the use of human-based products, such as Prolacta. The fact that YNHH elected not to carry or use Prolacta (or any other human-based product) does not negate the fact that human-based fortifier was readily available at the time of Arie’s birth and treatment and were, therefore, an available alternative to bovine-based products. The defendants had a duty to discuss with the parents the content of the bovine-based products, and obtain informed consent, but failed to meet that duty. Furthermore, the bovine-based fortifier is called “human milk fortifier”, suggesting that the bovine-based fortifier was actually made from human milk. The anticipated benefits of using human-based products was the decreased likelihood of developing NEC, leading to death. The use of bovine-based products was the proximate cause of Aries developing NEC and of Aries’ ultimate death resulting from complications from NEC.

The defendants fed Aries bovine-based products which, more likely than not, resulted in the development of NEC and Aries' ultimate death due to complications from NEC. The defendants were required to obtain informed consent from Aries' parents before using bovine-based products in Aries' feedings. The defendants were required to discuss the risks and benefits of the use of bovine-based products, and the alternatives. Prolacta was a readily available alternative; the fact that Yale elected not to stock it or use it did not make the alternative unavailable. The parents would have opted not to consent to the use of bovine-based products had the risks and alternatives been discussed. The failure to obtain any consent and informed consent, more likely than not, was the proximate cause resulting in the development of NEC and Aries' ultimate death.

“A plaintiff who is injured by the negligence of another is entitled to be compensated for *all* physical pain and suffering, and mental and emotional suffering, and the loss of the ability to enjoy life's pleasures that are legally caused by the defendant's negligence. . . .” (Emphasis added in original; internal quotation marks omitted.) *Maldonado v. Flannery*, 343 Conn. 150, 188 (2022). Connecticut General Statutes Section 52-555 allows for “just damages” for injuries resulting in death, together with the cost of reasonable and necessary medical and funeral expenses, the value of the decedent's lost earning capacity, compensation for the destruction of the decedent's ability to carry on and enjoy life's activities, compensation for the death itself, and pain and suffering. In determining damages, the court is not bound by a

“metaphoric’ formulation of tort damages”. (Internal citations omitted.) *Lynch v. State, supra* at 517. In formulating damages, the court attempts to put the injured person in a position “*as nearly as possible* equivalent to his position prior to the tort.” (Emphasis in original; internal quotation marks omitted.) *Id.*, quoting Restatement (Second), Torts, Section 901. Just damages are fair and reasonable damages.

“[P]roper compensation for noneconomic damages cannot be computed by a mathematical formula, and there is no precise rule for the assessment of damages. . . . The plaintiff need not prove damages with mathematical exactitude; rather, the plaintiff must provide sufficient evidence for the trier to make a fair and reasonable estimate. . . . Noneconomic damages, such as emotional distress, pain and suffering, are, at best, rather indefinite and speculative in nature. . . . For more than fifty years, this court has rejected the idea that any specific yardstick can be applied to cabin the discretion of the trier of fact when calculating a fair and appropriate award of noneconomic damages.” (Internal quotation marks omitted; internal citations omitted.) *Lafferty v. Jones*, 292 Conn. App. 487, 534 (2024).

The court agrees with the defendants that the operative complaint, the Third Amended Complaint, does not allege damages on behalf of the parents. No damages are awarded to the parents. The court’s award of non-economic damages reflects the court’s assessment of fair, just and reasonable damages for Aries’ pain, suffering and loss of the enjoyment of life, and of the death of Aries, itself.

IV. Conclusion:

The court finds in favor of the plaintiffs against each of the defendants on Counts One through Four of the Third Amended Complaint (#107); as to Count One, against Yale New Haven Hospital for its failure to obtain any consent; as to Count Two, against Yale University for its failure to obtain informed consent; as to Count Three, against Yale University for its failure to obtain any consent, and as to Count Four, against Yale New Haven Hospital for its failure to obtain informed consent. The court awards damages in favor of the plaintiffs against each of the defendants for economic and non-economic damages in the total amount of thirty-one million, nine hundred sixty-two thousand, eight hundred eighty-four dollars and forty-two cents (\$31,962,884.42) as follows:

I. Economic Damages:

(a) Reasonable medical and funeral expenses	\$ 747,317.42
(b) Loss of earning capacity	\$1,215,567.00
Total Economic Damages	\$1,962,884.42

II. Non-Economic Damages:

(a) Destruction of Capacity to Carry out and enjoy Life's activities	\$10,000,000.00
(b) Pain and Suffering	\$10,000,000.00
(c) Death itself	\$10,000,000.00
Total Non-Economic Damages:	\$30,000,000.00

III. Total Economic and Non-Economic Damages:	\$31,962,884.42
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BY THE COURT,

GOODROW, J.
Juris Number 434439